THE HON'BLE Ms. JUSTICE G. ROHINI

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W.P.No.10385 OF 2005

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ORDER:

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This Writ Petition is filed seeking a declaration that the action of the 2nd respondent-Sri Kesava Swamy Temple, in seeking to conduct auction in respect of the leasehold rights of the land to an extent of Ac.25.60 cents situated in Sy.No.372 of Nallacheruvupunta village, East Godavari District, as arbitrary and illegal. It is claimed that one Suryanarayana, the husband of the 1st petitioner and the father of the petitioners 2 to 4, was initially granted lease in respect of the said land and after his death the petitioners have been continuing in possession and enjoyment of the same, having been recognised as lessees by the 2nd respondent-Temple. It is stated that they have been paying the agreed rent regularly. While so, during the month of March, 2005, the Executive Officer of the 2nd respondent-Temple proposed to conduct auction of the leasehold rights of the said land, which is in occupation of the petitioners. The petitioners contend that since they are landless poor persons, they are entitled to continue in possession of the land in question as per Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, for short "the Act", and as a matter of fact, the applications filed by them before the 1st respondent-Assistant Commissioner of Endowments, seeking a declaration that they are landless poor are still pending. In the circumstances, the petitioners got issued a legal notice dated 21.3.2005 to the 2nd respondent-Temple requesting not to proceed with the proposed auction while the enquiry before the competent authority is pending with regard to their status as landless poor. It is alleged that the 2nd respondent-Temple failed to consider their request and on the other hand taking steps to proceed with the auction of the leasehold rights in respect of the land in question. Hence this Writ Petition.

On behalf of the 2nd respondent-Temple, the Executive Officer filed a detailed counter-affidavit denying the claim of the petitioners that the petitioners are continuing as lessees in respect of the land in question. Though the fact that the

husband of the 1st petitioner was a tenant at one point of time has not been denied, it is categorically stated that the petitioners were never recognized as tenants, but they are merely continuing in occupation of the land after the death of Suryanarayana. It is further stated that as per Section 82 of the Act all leases subsisting on 25.8.1987 i.e., as on the commencement of the said Act, stood cancelled. Though under Rule 3 of the Rules made under G.O.Ms.No.379 dated 11.3.2003, the Assistant Commissioner, Endowments, concerned is competent to determine the claim of the tenant as landless poor, the plea of the petitioners that they made such applications before the 1st respondent is incorrect. At any rate, since the petitioners are not the subsisting tenants, they are not entitled to claim the benefits under Section 82 of the Act. Even otherwise, since the extent of land is Ac.25.60 cents, the claim of the petitioners that they are landless poor is misconceived. It is also stated that the 2nd respondent issued notices under Rule 5(1) of the Rules made under G.O.Ms.No.379, calling upon the petitioners to hand over possession of the land, however, they failed to respond. In the circumstances, the contention of the petitioners that they are entitled to continue in possession is untenable and they are not entitled to any relief as prayed for.

I have heard the learned counsel for both the parties and perused the material on record.

Under Section 82 (1) of the Act, all leases of agricultural land belonging to any Endowment subsisting on the date of commencement of the Act i.e., 29.5.1987 shall stand cancelled, except in respect of agricultural lands held by landless poor persons, for not less than six years continuously. It is true that a landless poor person holding lease on the date of commencement of the Act has a right to purchase such a land for a consideration of 75% of the prevailing market value of similarly situated lands at the time of purchase, which shall be paid in four equal instalments. However, a plain reading of the Section makes it clear that such a benefit is conferred only on the tenants in whose favour there was subsisting tenancy as on the date of commencement of the Act. In the case on hand, admittedly one B. Suryanarayana was the tenant in respect of the land in question, who is no more. The Writ Petitioners herein claim to be the legal heirs of the said Suryanarayana. May be that the petitioners are continuing in possession of the land in question after the death of original tenant – Suryanarayana, however, there is absolutely no material to show that the 2nd respondent-Temple has recognized them

as tenants. On the other hand, the specific case of the 2nd respondent is that the petitioners herein are merely continuing in possession, but no lease has been granted in their favour at any point of time. In the circumstances, I am of the view that the petitioners are not entitled to claim the benefit conferred on the landless poor persons under Section 82 of the Act. Moreover, as rightly contended by the learned counsel for the 2nd respondent, since the petitioners are in possession of Ac.25.60 cents of land, apparently they do not fall within the category of landless poor persons, as defined in the Explanation to Section 82 of the Act. Hence, even assuming that the applications made by them for determination of their status as landless poor are pending before the 1st respondent, the same is of no consequence and on that ground no Mandamus can be issued restraining the 2nd respondent-Temple from putting the leasehold rights of the land in question to public auction. It is also relevant to note that the 2nd respondent-Temple has already issued notice under Rule 5(1) of the Rules made under G.O.Ms.No.379 dated 11.3.2003, calling upon the petitioners to vacate the land in question and to deliver vacant possession. The petitioners are bound to deliver the vacant possession in pursuance of the said notice, failing which it is always open to the 2nd respondent-Temple to get them evicted invoking the provisions under Sections 84, 85 and 86 of the Act, treating them as encroachers.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is liable to be dismissed. However, the learned counsel for the petitioners submits that there is standing crop on the land in question, and if they are dispossessed at this stage, they would be put to serious loss. Needless to mention that in case there is a standing crop, the petitioners are at liberty to make a representation before the 2nd respondent-Temple to allow them to continue in possession till the standing crop is harvested, subject to furnishing an undertaking to that effect and on payment of arrears of rent if any. If any such undertaking is furnished within two weeks from today, the 2nd respondent-Temple shall consider the request of the petitioner and shall not dispossess them till the standing crop is harvested.

Subject to the above observation, the Writ Petition is dismissed. No costs.

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24th October, 2005.

Note:- CC in 3 days.

(B/O)

Kgr

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No : 10385 of 2005

Between:

1 Bokke Sitharatnam, W/o. B. Suryanarayana,
R/o. Tallarevu (V &M), East Godavari District.
2 Bokka Radhakrishna, S/o. B. Suryanarayana,
R/o. Tallarevu (V &M), East Godavari District.
3 Bokka Bhanumurthy, S/o. B. Suryanarayana,
R/o. Tallarevu (V &M), East Godavari District.
4 Pampana Shanthakumari, W/o.Suryanarayana,
R/o. Tallarevu (V &M), East Godavari District.

..... PETITIONERS

AND

1 The Assistant Commissioner, Endowments Department,
Rajahmundry.
2 Sri Kesavaswamy Temple, Rep. by its Executive Officer,
Tallerevu (V &M), East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction or directions more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in seeking to conduct auction to its lands to the extent of 25 acres situated in Survey No. 372 of Tallerevu Village, of East Godavari District, pending enquiry by the 1st respondent into their status of land less poor, as illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.M.VIJAY KUMAR

Counsel for the Respondents: GP FOR ENDOWMENTS

Sri N.V. Anantha Krishna (R-2)